

REMARKS

Claims 1-7 are pending in the present application.

The rejection of Claim 1 under 35 U.S.C. §112, first paragraph (written description – new matter), is respectfully traversed.

The Examiner rejects Claim 1 alleging that the added limitation does not have a basis in the original disclosure. In making this assertion, the Examiner states: “Any negative limitation or exclusionary proviso must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff’d mem.*, 738 F.2d 453 (Fed. Cir. 1984).”

Applicants disagree with the Examiner's alleged lack of basis in the specification and remind the Examiner that the “lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of descriptive support.” *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). Indeed, it is incumbent upon the Examiner to ascertain whether the negative limitation or proviso otherwise satisfies the written description requirement of 35 U.S.C. §112, first paragraph. Notably, the written description requirement may be met through an implicit disclosure.

With this in mind, Applicants offer the following explanation of implicit support for the negative limitation “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine

fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97”.

In the middle of page 3 of the Office Action, the Examiner states:

However the specification continues to describe a process where the microfine fiber-forming fibers (A') and (B') are mixed or blended.

It should be noted that what are mixed or blended are the microfine fiber forming fibers, not the elastic microfine fibers and the non-elastic microfine fibers. In the process of mixing or blending the microfine fiber-forming fibers (A') and (B'), the elastic microfine fibers and the non elastic microfine fibers cannot be mixed or blended. Even after such a process of mixing or blending, the island component for forming elastic microfine fibers and the island component for forming non elastic microfine fibers are separately included in the microfine fiber-forming fibers (A') and (B'), respectively. The skilled artisan would readily recognize that the mixing or blending of the microfine fiber-forming fibers (A') and (B') does not result in the mixing or blending of the elastic microfine fibers and the non elastic microfine fibers.

The specification discloses:

In the present invention, as the island component, an elastic polymer is used in the microfine fiber-forming fiber (A') for forming the microfine fiber bundle (A), and a non-elastic polymer in the microfine fiber-forming fiber (B') for forming the microfine fiber bundle (B) (page 6, lines 9-13).

Namely, the island component of the microfine fiber-forming fiber (A') is an elastic polymer, and the island component of the microfine fiber-forming fiber (B') is a non-elastic polymer.

The specification further discloses:

The microfine fiber-forming fiber (A') is produced by spinning an elastic polymer (island component) having a JIS A hardness of 90 to

97 and a polymer (sea component)... from a composite spinning nozzle so as to have the number of islands of 10 to 100 (page 16, lines 9-12).

The microfine fiber-forming fiber (B') may be produced by a known spinning method. The non-elastic polymer is used as the island component (page 16, lines 26-27).

In Spinning Example 1, the microfine fiber-forming fiber (A') is produced from polyurethane (elastic island component) and polyethylene (sea component), and in Spinning Example 2 from polyurethane (elastic island component) and a dry blend of polyethylene and silicone powder (sea component). In Spinning Example 5, the microfine fiber-forming fiber (B') is produced from nylon-6 (non-elastic island component) and polyethylene (sea component).

From the foregoing, the specification clearly discloses that the microfine fiber-forming fiber (A') does not contain a non-elastic polymer, and that the microfine fiber-forming fiber (B') does not contain an elastic polymer.

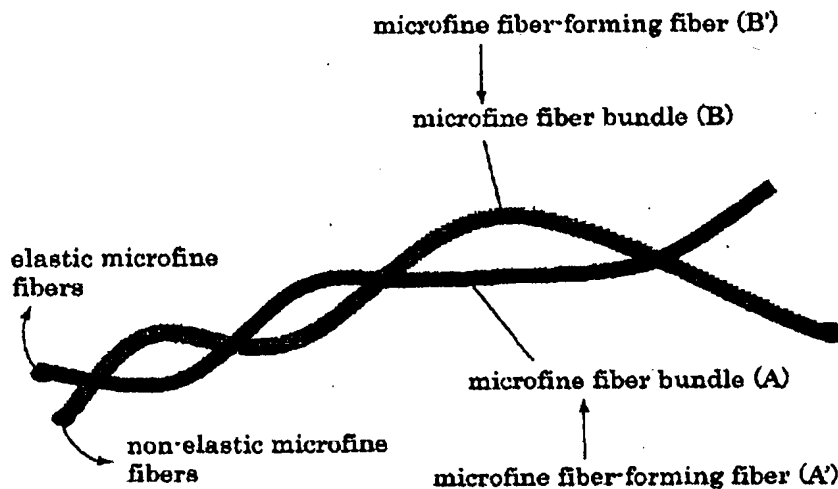
Then, the microfine fiber-forming fibers (A') and (B') are mixed or blended. However, as noted above, the island component which are to be made into elastic microfine fibers and the island component which are to be made into non-elastic microfine fibers cannot be mixed or blended because the elastic island component and the non-elastic island component are separately included in different the microfine fiber-forming fibers.

Thereafter, the microfine fiber-forming fibers (A') are converted to the microfine fiber bundles (A) containing the elastic microfine fibers resulted from the elastic island components. On the other hand, the microfine fiber-forming fiber (B') are converted to the microfine fiber bundles (B) containing the non-elastic microfine fibers resulted from the non-elastic island components.

As noted above, since the microfine fiber-forming fiber (A') does not contain a non-elastic polymer, it would appear that the resultant microfine fiber bundle (A) also does not

contain the non-elastic microfine fibers. Similarly, it would appear that the resultant microfine fiber bundle (B) does not contain the elastic microfine fibers.

From the above-highlighted sections of the specification, the skilled artisan would readily recognize that although the microfine fiber bundles (A) and (B) are mixed or blended to form the body of entangled nonwoven fabric, the bundles of (A) do not contain the non-elastic microfine fibers and the bundles of (B) do not contain the elastic microfine fibers. To further this understanding the following drawings is provided:



In the paragraph bridging pages 3 and 4 of the Office Action, the Examiner states:

The specification does not teach or disclose specifically that non-elastic polymers are not included in (A) and that microfne fibers which have a single fiber fineness of 0.5 dtex or less and which are made of elastic polymer are not in (B).

Applicants submit that contrary to the Examiner's alleged position, the skilled artisan would reasonably and readily recognize that the specification clearly discloses, as discussed above, the limitation added to the pending Claim 1. Specifically, the specification properly provides support for the negative limitation "wherein microfne fiber bundle (A) does not contain microfne fibers made of non-elastic polymers and that microfne fiber bundle (B)

does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97”.

Accordingly, Applicants request withdrawal of this ground of rejection.

The rejections of: (a) Claims 1 and 6 under 35 U.S.C. §102(e) over Nakayama et al - US (U.S. 6,767,853), (b) Claims 1 and 6 under 35 U.S.C. §102(b) over Nakayama et al - EP (EP 1067234); (c) Claim 6 under 35 U.S.C. §102(b) over Nakayama et al - EP (EP 1067234); and (d) Claims 1 and 6 under 35 U.S.C. §103(a) over Nakayama et al - EP (EP 1067234), are traversed.

At the outset, Applicants note that Nakayama et al – EP is the European counterpart to Nakayama et al – US. Therefore, these references suffer the same deficiencies with respect to the claimed invention, which are highlighted below.

Claim 1 of the present invention is drawn to

A leather-like sheet substrate comprising a fiber-entangled nonwoven fabric that comprises a microfine fiber bundle (A) and a microfine fiber bundle (B) in a blending ratio (A)/(B) of 30/70 to 70/30 by mass and a polymeric elastomer contained in the fiber-entangled nonwoven fabric, the microfine fiber bundle (A) comprising 10 to 100 microfine fibers each of which has a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97, and the microfine fiber bundle (B) comprising a microfine fiber which has a single fiber fineness of 0.5 dtex or less and which is made of a non-elastic polymer, wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97.

The Examiner dismissed Applicants previous arguments alleging that “the claims do not require that the bundles are solely A or solely B, but instead they have bundles which comprise A and which comprise B, which means that each bundle which comprises A can also comprise B and each bundle B can also comprise A” (see page 8, lines 2-5 of the Office

Action mailed June 4, 2007). In recognition of this interpretation, Applicants amended Claim 1 in the response filed October 4, 2007 to specify that “microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97”.

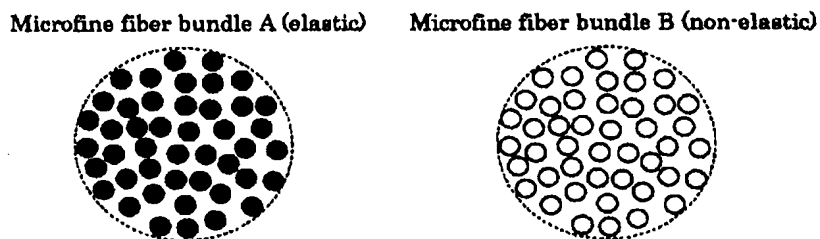
In maintaining these rejections, in paragraph 7 on page 12 of the Office Action mailed December 20, 2007, the Examiner addresses the foregoing stating:

Applicants argue that the fiber bundles (A) and (B) do not include a blend of microfine fiber forming fibers (A') and (B'). While the diagrams presented in the arguments clearly show that the fiber bundles are not blends of fibers, the specification does not teach these claim limitations. The specification teaches the mixing and blending of microfine fiber-forming fibers and appears to teach that they are not blended but does not teach that not mixing or blending produces unexpected results and improvements.

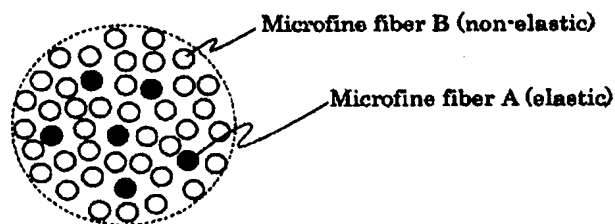
Based on this assertion by the Examiner it appears to be the Examiner's position that the structural differences between the claimed invention and the cited art is not being considered because the Examiner contends that the specification does not support the asserted difference (see also the “new matter” rejection above). Applicants disagree with this assertion, as well as the conclusion by the Examiner. For the reasons set forth above and incorporated herein by reference, Applicants submit that the limitation “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97” is supported by the specification and distinguishes the claimed invention from the disclosure of Nakayama et al – EP and Nakayama et al – US.

More particularly, Applicants submit that from the text of Claim 1 it is clear that the claimed leather-like sheet substrate is composed of *two kinds* of fiber bundles: the elastic

fiber bundle (A) made of elastic microfine fibers and the non-elastic fiber bundle (B) made of non-elastic microfine fibers. The elastic fiber bundle A is formed from the microfine fiber-forming fiber A' which contains an elastic polymer as the island component (page 16, lines 9-12). The non-elastic fiber bundle B is formed from the microfine fiber-forming fiber B' which contains a non-elastic polymer as the island component (page 16, lines 26-27). Therefore, the claimed elastic fiber bundle (A) and non-elastic fiber bundle (B) could be illustrated as follows:



In contrast, *each fiber bundle* of disclosed in Nakayama et al – EP and Nakayama et al – US is composed of elastic fibers A *and* non-elastic fibers B, in which each elastic fiber A is encircled by the non-elastic fibers B (column 3, lines 28-45; column 4, lines 7-9; etc.). Therefore, the fiber bundle disclosed in Nakayama et al – EP and Nakayama et al – US could be illustrated as follows:



The fiber bundle disclosed in Nakayama et al – EP and Nakayama et al – US is formed from a microfine fiber-forming fiber which contains both an elastic polymer and a non-elastic polymer (Example 1, etc.). Therefore, a single fiber bundle disclosed in Nakayama et al – EP and Nakayama et al – US contains both the elastic microfine fibers and the non-elastic

microfine fibers. In fact, in each fiber bundle of disclosed in Nakayama et al – EP and Nakayama et al – US, each elastic fiber A is required to be encircled by the non-elastic fibers B. Again, the Examiner is reminded that in the presently claimed invention each elastic fiber is encircled by other elastic fibers in each of the claimed elastic fiber bundles (A).

Applicants submit that the claimed invention is clearly distinct from the disclosure of Nakayama et al – EP and Nakayama et al – US at least in view of the structural differences in the fiber bundles. The Examiner recognizes as much stating “Examiner agrees that the fiber bundles of Nakayama comprise both microfine fiber A and microfine fiber B as stated in claim 1 of Nakayama” (see page 8, lines 7-8 of the Office Action mailed June 4, 2007). Therefore, for the reasons give above which are recognized by the Examiner, neither Nakayama et al – EP nor Nakayama et al – US can anticipate the claimed invention as these references fail to disclose all the limitations of the claimed invention.

In view of the foregoing, Applicants again request withdrawal of the rejections over the disclosures of Nakayama et al – EP and Nakayama et al – US.

The rejections of Claim 3 over : (a) Nakayama et al - EP (EP 1067234) in view of Minami et al, and (b) Nakayama et al - EP (EP 1067234) in view of Kato et al (US 4,476,186) each under 35 U.S.C. §103(a) are respectfully traversed.

As discussed above, the present invention and Nakayama et al - EP (EP 1067234) are clearly distinguished from each other at least in the structures of fiber bundles. The Examiner cites Minami et al and Kato et al as showing the incorporation of powder into the entangled nonwoven substrate is known. Applicants make no statement with respect to the alleged disclosures of Minami et al and Kato et al, but note that each of these references is completely silent about the specifically claimed elastic fiber bundle (A) and non-elastic fiber

bundle (B) described above. As such, Minami et al and Kato et al fail to remedy the basic deficiency of Nakayama et al - EP (EP 1067234). Therefore, even if the skilled artisan were to combine the disclosure of Nakayama et al - EP (EP 1067234) with either Minami et al or Kato et al the present invention would still not be apparent or obvious.

In paragraph 9 of the Office Action mailed December 20, 2007, the Examiner again summarizes the reason why Minami et al and Kato et al are cited. However, the Examiner makes no effort to show how Minami et al and Kato et al would compensate for the aforementioned deficiency in the disclosure Nakayama et al - EP (EP 1067234). Indeed, there is a good reason why the Examiner has not made such an effort. Put simply, it is because Minami et al and Kato et al do not remedy the basic deficiency of Nakayama et al - EP (EP 1067234).

In view of the foregoing, Applicants request withdrawal of these grounds of rejection.

The rejection of Claims 2, 4, and 5 under 35 U.S.C. §103(a) over Nakayama et al - EP (EP 1067234) in view of Kato et al (US 4,476,186) is respectfully traversed.

As discussed above, the present invention and Nakayama et al - EP (EP 1067234) are clearly distinguished from each other at least in the structures of fiber bundles. The Examiner cites Kato et al as allegedly disclosing an entangled non-woven fabric having a fiber structure and that the ultrafine fibers and fine bundles of ultrafine fibers are entangled with one another and in which both portions (A) and (B) are nonuniformly distributed in the direct of fabric thickness. Applicants make no statement with respect to the alleged disclosure of Kato et al, but note that each of this reference is completely silent about the specifically claimed elastic fiber bundle (A) and non-elastic fiber bundle (B) described above. As such, Kato et al fail to remedy the basic deficiency of Nakayama et al - EP (EP

1067234). Therefore, even if the skilled artisan were to combine the disclosure of Nakayama et al - EP (EP 1067234) with Kato et al the present invention would still not be apparent or obvious.

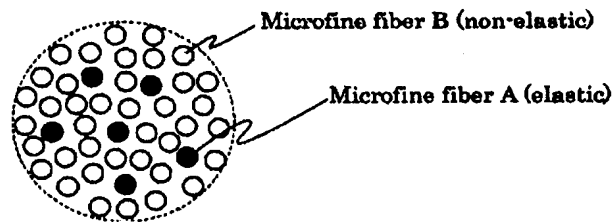
In paragraph 8 of the Office Action mailed December 20, 2007, the Examiner again summarizes the reason why Kato et al is cited. However, the Examiner makes no effort to show how Kato et al would compensate for the aforementioned deficiency in the disclosure Nakayama et al - EP (EP 1067234). Indeed, there is a good reason why the Examiner has not made such an effort. Put simply, it is because Kato et al does not remedy the basic deficiency of Nakayama et al - EP (EP 1067234).

In view of the foregoing, Applicants request withdrawal of these grounds of rejection.

The rejection of Claims 1, 2, and 4-6 under the doctrine of obviousness-type double patenting over Claim 1 and 15 of Nakayama et al - US (U.S. 6,767,853) is respectfully traversed.

Applicants refer the Examiner to the discussion above with respect to the differences in the structure defined in the leather-like sheet substrate of the claimed invention and the fibrous substrate defined in Nakayama et al - US. Applicants contend that when the claims and the support offered in the present specification for the limitation “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97” is properly considered, the following remarks clearly establish a distinction between the presently claimed invention and that disclosed in Nakayama et al - US.

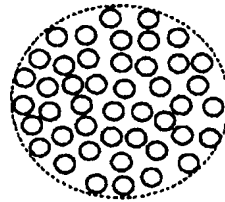
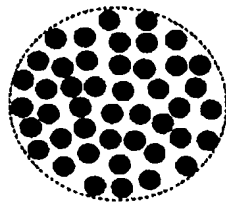
Specifically, the Examiner is reminded that the structure defined the claims of Nakayama et al - US is best illustrated as:



Therefore, a single fiber bundle in Nakayama et al - US contains both the elastic microfine fibers and the non-elastic microfine fibers. In fact, in each fiber bundle in Nakayama et al - US each elastic fiber A is required to be encircled by the non-elastic fibers B.

In contrast, the presently claimed elastic fiber bundle (A) and non-elastic fiber bundle (B) is illustrated as follows:

Microfine fiber bundle A (elastic) **Microfine fiber bundle B (non-elastic)**



(see Claim 1).

Unlike the structure defined in Nakayama et al - US, the presently claimed invention each elastic fiber is encircled by other elastic fibers in each of the claimed elastic fiber bundles (A).

The Examiner is reminded of MPEP §707.07(f), which states "Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." In the Office Action in paragraph 10 (page 13), the Examiner merely concludes that "Applicant's arguments with respect to the Double Patenting rejection are not persuasive and the rejection is maintained." However, the Examiner makes no effort to explain how the foregoing argument is not persuasive.

Considering that a double patenting rejection is based on the claims, it is improper to rely upon any alleged similarities in the underlying disclosure. Therefore, if it is the Examiner's intent to rely upon the preceding paragraphs in an effort to explain why the double patenting rejection was maintained, Applicants submit that this reliance is misplaced. Clearly, the Examiner has failed to make a proper case to maintain the obviousness-type double patenting rejection and has failed to properly comply with MPEP §707.07(f).

In view of the foregoing, Applicants submit that this ground of rejection should be withdrawn. Acknowledgement to this effect is requested.

Finally, with respect to the non-elected method claims, Applicants remind the Examiner of MPEP §821.04. Accordingly, upon a finding of allowability of the elected product claims, Applicants respectfully request rejoinder of the withdrawn process claims that depend therefrom.

Applicants submit that the present application is now in condition for allowance. Early notification of such action is earnestly solicited.

Respectfully submitted,

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